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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,973	01/29/2004	Brian T. Denton	BUR920040008US1	1972
29154 7590 07/28/2008 FREDERICK W. GIBB, III Gibb & Rahman, LLC 2568-A RIVA ROAD SUITE 304 ANNAPOLIS, MD 21401				
EXAMINER				
KARDOS, NEIL R				
ART UNIT		PAPER NUMBER		
3623				
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07/28/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/707,973

**Applicant(s)**

DENTON ET AL.

**Examiner**

Neil R. Kardos

**Art Unit**

3623

**Period for Reply** -- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 7-20 and 27-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 21-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/29/04, 2/20/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This is a **NON-FINAL** Office action on the merits in response to Applicant's response to election/restriction filed on May 27, 2008. Currently, claims 1-33 are pending.

#### ***Election/Restrictions***

2. Claims 7-20 and 27-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 27, 2008.

#### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 1-6 and 21-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1 and 21 are directed toward the statutory category of a process. In order for a claimed process to be patentable subject matter under 35 U.S.C. § 101, it must either: (1) be tied to another statutory class (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *See Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method/process is not patentable subject matter under § 101. Thus, to qualify as a statutory process under § 101, the claim should positively recite the other statutory class to which it is tied (e.g. by identifying

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the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g. by identifying the material that is being changed to a different state).

Here, the claimed invention is not tied to another statutory class because it does not recite a particular apparatus for carrying out the method steps. In other words, the method could be carried out entirely in the human mind. Furthermore, the claimed invention does not transform underlying subject matter to a different state or thing because it merely manipulates data.

Claims 2-6 and 22-26 are rejected for failing to remedy the deficiencies of the claims from which they depend.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Crampton (US 6,898,472).**

Claim 1: Crampton discloses a method for determining a supply chain plan comprising:

- creating, from a single demand record, a plurality of distinct demand records, wherein each of said distinct demand records has a different demand date (see col. 12: ln. 11-45, disclosing determining a range of start dates, need dates, and

preference dates for an order; col. 7: ln. 63 – col. 8: ln. 3; col. 10: ln. 42-55;  
figures 7A-D); and

- performing core processing to create said supply chain plan, wherein said core processing considers all of said distinct demand records (see col. 10: ln. 5-55; col. 13: ln. 54 - col. 14: ln. 42; col. 16: ln. 22 – col 17: ln. 29; col. 21: ln. 35—col. 22: ln. 10).

Claim 2: Crampton discloses performing post processing on said supply chain plan to select one of said distinct demand records for supplying said single demand record (see col. 10: ln. 5-55; col. 13: ln. 54 - col. 14: ln. 42; col. 16: ln. 22 – col 17: ln. 29; col. 21: ln. 35—col. 22: ln. 10).

Claim 3: Crampton discloses wherein said distinct demand records have different demand priorities (see col. 16: ln. 22 – col. 17: ln. 29; col. 12: ln. 11-45; col 14: ln. 30-36; col. 8: ln. 53-62).

Claim 4: Crampton discloses performing a binning operation to represent said distinct demand records with demand priorities (see at least figure 9).

Claim 6: Crampton discloses wherein said different demand dates comprise a commit date and a request date (see col. 12: ln. 11-45).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 5 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crampton in view of Moodie, “Demand Management: The Evaluation of Price and Due Date Negotiation Strategies Using Simulation.”**

Claim 5: Crampton does not explicitly disclose selecting one of said distinct demand records for supplying said single demand record, based at least in part upon pricing. However, Crampton does disclose prioritizing orders based on revenue (see col. 16: ln. 48 – col. 17: ln. 29).

Moodie discloses using pricing to determine when to deliver an order (see at least figure 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Moodie to incorporate pricing into Crampton’s production planning system. One of ordinary skill in the art would have been motivated to do so for the benefit of maximizing profit (see e.g. Moodie abstract on page 151) and increasing reliability (see e.g. Moodie pp. 151-152).

Claims 21-24 and 26: Claims 21-24 and 26 are substantially similar to claims 1-6 and are rejected under similar rationale.

Claim 25: Crampton and Moodie do not explicitly disclose wherein said core processing is based on iterative solutions of a linear program. However, Examiner takes Official Notice that it was well-known in the production planning arts at the time the invention was made to use linear programming to optimize production processes. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use old and well-known linear programming techniques to optimize the production plan of Crampton. This combination of known elements retains the functionality of the separate elements and produces a result that would be predictable to one of ordinary skill in the art.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- European Patent Application Publication #0425405 to James, directed to an automated customer order promising and confirming method
- US 7,164,959 to Huang et al, directed to classifying demand data

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos  
Examiner  
Art Unit 3623

NRK  
7/22/08  
/Jonathan G. Sterrett/  
Primary Examiner, Art Unit 3623